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In the Supreme Court of the United States

OCTOBER TERM, 1976

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL–CIO, AND UNITED STEELWORKERS OF AMERICA, AFL–CIO, PETITIONERS

v.

W. J. USERY, JR., SECRETARY OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 520 F. 2d 516. The opinion of the district court (Pet. App. 17a-22a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 16a) was entered on August 5, 1975. The petition for a writ of certiorari was filed on November 3, 1975,

and was granted on February 23, 1976. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a union rule restricting candidacy for local office to those members who have attended at least 50 percent of the local union meetings during the three-year period preceding nominations is a "reasonable qualification" on the right of candidacy within the meaning of Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, when its effect is to disqualify 96.5 percent of the local union membership.

STATUTE INVOLVED

Section 401 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 532–533, 29 U.S.C. 481, provides in pertinent part:

TITLE IV. ELECTIONS

Terms of Office: Election Procedures

* * * * *

Sec. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

* * * * *

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. * * *

STATEMENT

1. The Secretary of Labor instituted this action under Section 402 of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482 ("LMRDA"), to set aside the election of officers conducted on June 22, 1970, by Local 3489, United Steelworkers of America, at Terre Haute, Indiana. The complaint (A. 2–4) alleged that the local had imposed an unreasonable qualification for candidacy for local union offices, in violation of Section 401(e), 29 U.S.C. 481(e), and had failed to elect its officers by secret ballot, in violation of Section 401(b).[1] The United Steelworkers of America intervened as a party defendant (A. 5–6).

Local 3489 is comprised of production and maintenance employees of Stran Steel Corporation of Terre Haute (A. 8). It is chartered by and subordinate to the United Steelworkers of America, AFL–CIO (the "International"), and is subject to the International's constitution (*ibid.*). One provision of

[1] Bernard Frye, an unsuccessful candidate for president, had complained of these violations to the union and, having exhausted his union remedies without securing relief, thereupon to the Secretary (Pet. App. 3a–4a; A. 16–17).

that constitution,[2] and the rule at issue here, restricts candidacy for local union office to members in good standing who have attended at least 18 of the 36 regular monthly meetings of the local preceding the triennial election (unless other union activities or work hours preclude attendance) (Pet. App. 3a; A. 8–10).

Most of the facts regarding the rule and its effects in this case were stipulated (A. 7–55). At the time of the 1970 election, Local 3489 had approximately 660 members in good standing, of whom only 23 were able to satisfy this precondition to candidacy. Nine or ten of those members were incumbent officers. Ultimately 13 candidates were nominated and ran for the union's ten offices. The candidates for vice president, recording secretary, financial secretary, treasurer, guide, and guard ran unopposed. Three candidates ran for president, and four ran for the three trustee positions (see Exhibit E, A. 23). Six of the thirteen candidates were incumbents, each of whom was reelected, meaning that the incumbents retained control of six of the ten union offices.[3]

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[2] See Article VII, Section 9 of the International constitution (A. 9).

[3] The Stipulation states (A. 11) that 22 members of the local—those listed in Exhibit D (A. 23)—were eligible for having satisfied the meeting attendance requirement. That list should have included Baker, the incumbent recording secretary, who was also stated to have been eligible (A. 11, ¶ 11). Thus there were 23 members eligible.

Of those 23, nine were incumbents (Uzzell, Satz, Baker, Layman, Krischak, Brown, Hoffman, Dayhuff, and Erickson) (A. 11). As petitioners suggest (Br. 7, n. 10), the inclusion of Brackall

During the relevant period the members of Local 3489 worked three shifts, Monday through Friday, without rotation (A. 10). From January 1967 through February 1970, monthly "split meetings" (on the second Wednesday and Thursday afternoons of each month) were held at the union hall, located some three miles from the plant. Beginning in March 1970 a single meeting was held on the third Sunday afternoon of each month (A. 10–11). Attendance at the monthly meetings (including both sessions of the split meetings) averaged only 47 (A. 11).

2. The district court dismissed the complaint, finding no violation of the Act (Pet. App. 17a–22a). It ruled that the meeting attendance requirement is reasonable under Section 401(e) because it leaves it "to each member to decide whether or not he will qualify

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as an eligible incumbent was error: whether or not he was an incumbent, he was not eligible (A. 14).

Brackall and Jones were nominated notwithstanding their ineligibility (A. 11–12). They were informed of their ineligibility and apparently stricken from the list of candidates (A. 14).

Of the 23 eligible candidates, five were not nominated for office (Jett, Kennedy, Batson, Debney, and J. L. Powell) (compare Exhibit D, A. 23, with the list of nominees at A. 11–12). Of the 18 eligible candidates nominated, six declined to run (Kirshak, King, J. Powell, McCloud, Satz, and Baker) (compare A. 11–12 with Exhibit E at A. 23), leaving 12 candidates for the union's ten offices. Wayne Larue was then allowed to run for guide notwithstanding his ineligibility under the meeting attendance rule, there having been no eligible candidate nominated and willing to run for that post.

Grievance Committee members are not "officers" within the Act's definition, and therefore the Secretary did not challenge the meeting attendance rule as it relates to Grievance Committee candidates.

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himself for union office" and because it bears a "necessary relationship to fitness for office" (*id.* at 20a).

The court of appeals reversed, relying in large measure on *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, in which this Court invalidated a rule restricting eligibility for major union offices to members who had previously held office. In that case the candidate limitation rendered 93 percent of the union members ineligible for office, and the Court said that a rule having such an effect "can hardly be a 'reasonable qualification'" under Section 401(e) (391 U.S. at 502). Here the meeting attendance rule disqualified 96.5 percent of the local union's membership from office, and the court of appeals said that "it cannot be deemed a reasonable qualification either" (Pet. App. 7a).

The court did not, however, rest its judgment on a determination that the large-scale disqualification caused by the meeting attendance rule was *per se* unreasonable. While the court stated that the disqualification of so high a percentage of the union membership might in itself be unreasonable (Pet. App. 8a), it held that the unreasonableness of the meeting attendance rule here was also shown by its tendency to produce other results inimical to the purposes of the LMRDA. Thus, the rule perpetuates "entrenched leadership" by making would-be challengers to union officers plan their campaigns at least 18 months before the next election, even though they might have been content with the incumbent leader-

ship at that time, and by disqualifying prospective candidates who had assiduously attended meetings for as long as 17 months in a row (Pet. App. 9a).

The court discounted petitioners' reliance on an outdated section of the LMRDA Interpretative Manual issued by the Secretary, which provided that a two-year, 50 percent meeting attendance requirement would not be deemed unreasonable under Section 401(e).[4] The court observed (Pet. App. 10a) that "the three-year rule can be 50% harsher," and "the reasonableness of the two-year rule does not determine the reasonableness of the three-year rule."

The court of appeals also rejected the argument that the three-year, 50 percent meeting attendance rule was a reasonable means of assuring candidates' interest in and knowledge of union affairs, noting that a similar claim had been made in support of the candidacy qualification invalidated in the *Hotel Employees* case. Nor could the rule be justified as an inducement to attendance at union meetings when it barred 96.5 percent of the members from candidacy for local office yet produced an average meeting attendance of only 47 out of 660 members. Finally, the court noted (Pet. App. 11a) that only one other national union[5] had specified a three-year period during which a

[4] The provision, Section 422.206 of the Manual, had been superseded by 29 C.F.R. 452.38, which provides that, in place of "arbitrary guidelines," reasonableness is to be judged "in the light of all the circumstances of the particular case." The guidelines issued by the Secretary concerning candidacy qualifications under the Act appear at 29 C.F.R. 452.35–452.38.

[5] See note 26, *infra*.

member must attend meetings to qualify as a candidate for local union office.*

SUMMARY OF ARGUMENT

Section 401(e) of the Labor-Management Reporting and Disclosure Act fosters democracy in the union electoral process by providing that "a reasonable opportunity shall be given for the nomination of candidates" and that every union member in good standing "shall be eligible to be a candidate" subject only to "reasonable qualifications uniformly imposed." The statutory language in question here—"reasonable qualifications"—must be narrowly construed, for "Congress plainly did not intend that [it] * * * should be given a broad reach." *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492, 499 (*"Hotel Employees"*).

It follows that a candidacy limitation having an inimical impact on union democracy can be reasonable under the Act only if it serves other union needs of such importance that, on balance, it must be tolerated notwithstanding its inconsistency "with the Act's command to unions to conduct 'free and democratic' union elections" (*Hotel Employees, supra,* 391 U.S. at 499). And the union must show that it cannot achieve the stated goals of an antidemocratic candidacy restriction by alternative means less antagonistic to the purposes

* The court of appeals also reversed the district court's dismissal of the Secretary's allegation that the union election had been conducted in violation of the Act's secret ballot requirement (Pet. App. 11a–15a). Petitioners have not sought further review of that ruling.

of the Act. See *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 244 F. Supp. 745, 749 (W.D. Pa.), dismissed as moot, 372 F. 2d 86 (C.A. 3), reversed, 389 U.S. 463, on remand affirmed in relevant part, 405 F. 2d 176.

Meeting attendance requirements may serve legitimate union purposes, as the Secretary of Labor has recognized, but petitioners' version of the rule is so unremittingly hostile to union democracy that the justifications for meeting attendance rules in general cannot save it. To begin with, it rendered 96.5 percent of the union membership ineligible for office. As this Court said of a candidacy restriction that disqualified 93 percent, a rule so restrictive of the freedom of choice of voters as well as would-be candidates "can hardly be a 'reasonable qualification'" under Section 401(e) (*Hotel Employees, supra,* 391 U.S. at 502).

Petitioners' 50 percent, three-year rule also favors incumbents by requiring would-be opposition candidates at election time to have had both the foresight and the cause to launch an opposition campaign 18 months earlier. The realities of union politics, however, are that opposition typically crystallizes into candidacies and full opposition slates only as the election draws near and issues of union governance become immediately topical. Petitioners' long-range planning requirement "substantially deplete[s] the ranks of those who might run in opposition to incumbents" and thus seriously impairs "[t]he check of democratic elections as a preventive measure" to

the abuses the Act meant to curb (*Hotel Employees, supra,* 391 U.S. at 499).

The ability of union members to qualify for candidacy by attending 18 of the union's 36 meetings over a three-year period does not establish the validity of the rule. Congress has sanctioned only those qualifications that are "reasonable," not all that a union member might satisfy by dint of his or her own efforts. Accordingly, most of the decisions striking down particular candidacy restrictions have involved rules with which individual members could have complied, and in *Hotel Employees* it was not dispositive that the qualification under attack left the eligibility of potential opposition candidates in the hands of the incumbency. "Reasonableness" is the standard and petitioners' rule does not measure up: it has the antidemocratic effects just mentioned, and it serves no legitimate union need that could not be satisfied by means less incompatible with the Act's democratic goals.

Petitioners suggest that the rule is justified because it promotes attendance at union meetings and therefore restrains arbitrary or corrupt union leadership. But petitioners have not shown that other incentives, not having so antidemocratic an impact at election time, are any less effective at inducing attendance than their rule—which, indeed, can actually encourage the attendance, not of the membership at large, nor even of all would-be opposition candidates, but only of those would-be candidates who in fact plan

their campaign at least 18 months in advance of the election.

Attendance at Local 3489's meetings during the relevant period averaged only 47 members out of 600. Even assuming that without the rule some of these individuals would have attended fewer meetings than otherwise, the gain in meeting attendance is far too small to justify disqualifying 96.5 percent of the union membership from holding office. Moreover, it is not suggested that with a more lenient candidacy requirement the rank-and-file attendance at union meetings would cease entirely, and petitioners do not explain how any lack of diligence or sharp practices by the leadership are more likely to be exposed and corrected by whatever incremental attendance may result from a 50 percent, three-year rule.

Nor can the rule be justified by the union's need to insure that only dedicated and knowledgeable members will be elected to office. The effective ability to lead is a campaign issue, entrusted by the Act to the union membership's "common sense and judgment in casting their ballots" (*Hotel Employees, supra,* 391 U.S. at 504). The assumption behind petitioners' rule, "that rank-and-file union members are unable to distinguish qualified from unqualified candidates," is contrary to the Act's premise "that citizens assumed to make discriminating judgments in public elections [can] be relied on to make such judgments when voting as union members" (*ibid.*).

Furthermore, it may be doubted whether attendance at union meetings is necessary to prepare for union

leadership, and, even if it is, petitioners have not shown that alternative measures would not be equally effective. Moreover, the rule "is not faithful to its own premise" (*Hotel Employees, supra,* 391 U.S. at 504), since it allows members whose work hours conflict with union meetings to run for office without having attended any meetings or undertaken any other activity to demonstrate their commitment or insure their capability.

Of the 72 international unions polled by the Secretary, representing 90 percent of the Nation's union membership, only 12 have any meeting attendance requirement at all. Only one other than the Steelworkers has a requirement extending beyond a two-year period. Petitioners' rule is thus "virtually unique in trade union practice" (*Hotel Employees, supra,* 391 U.S. at 505), and cannot be so critical to good union governance as to warrant precluding 96.5 percent of the union membership from running for office.

ARGUMENT

PETITIONERS' RULE REQUIRING CANDIDATES FOR UNION OFFICE TO HAVE ATTENDED 18 OF THE 36 UNION MEETINGS PRECEDING THE ELECTION IS NOT A "REASONABLE QUALIFICATION" UNDER SECTION 401(e)

A. THE REASONABLENESS OF A CANDIDACY REQUIREMENT MUST BE MEASURED BY ITS EFFECT ON UNION DEMOCRACY

Congress enacted the Labor-Management Reporting and Disclosure Act in large measure to curb and correct the misgovernment and abuses in union management uncovered during the extensive hearings

held by the Senate Committee on Improper Activities in the Labor and Management Field (the McClellan Committee). S. Rep. No. 187, 86th Cong., 1st Sess. 2 (1959); H.R. Rep. No. 741, 86th Cong., 1st Sess. 1 (1959); *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 389 U.S. 463, 469–470; *American Federation of Musicians* v. *Wittstein,* 379 U.S. 171, 177 and n. 4. Title IV of the Act was the outcome of Congress' belief that, because of their quasi-governmental powers, unions should be required to follow democratic processes "to insure that the officials who wield [this power] are responsive to the desires of the men and women whom they represent" (S. Rep. No. 187, *supra,* at 20; H.R. Rep. No. 741, *supra,* at 16). "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections." *Wirtz* v. *Local 153, supra,* 389 U.S. at 470. It "establishes a set of substantive rules governing union elections * * * and it provides a comprehensive procedure for enforcing those rules." *Trbovich* v. *United Mine Workers of America,* 404 U.S. 528, 531. See *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492, 498 (*"Hotel Employees"*).

This case is concerned with the portion of Title IV that deals with the nomination of candidates for office. Because it is the very start of the election process, any substantial deviation from democratic methods of nomination tends to defeat the goal of union government responsive to the will of its members. Congress

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therefore recognized that there must be a "real opportunity to nominate opposing candidates," 105 Cong. Rec. 885 (1959), because otherwise "practical control of elections is left in the hands of autocratic union officials," 105 Cong. Rec. 14273 (1959). Section 401(e), 29 U.S.C. 481(e), thus establishes the right of every union member in good standing to be a candidate for any office "subject * * * to reasonable qualifications uniformly imposed."

The Act offers no specific guide for determining what are "reasonable qualifications," but this Court in the *Hotel Employees* case examined the congressional intent behind the reasonableness requirement and explained the scope of inquiry appropriate to the evaluation of a particular candidacy qualification. The Court observed that Congress looked to the American political process at large as its model for democratic union elections (391 U.S. at 504) and "plainly did not intend that the authorization in § 401(e)" to impose preconditions on candidacy "should be given a broad reach" (*id.* at 499). The Court also stated that "[u]nduly restrictive candidacy qualifications" threaten to defeat the Act's goals, and indicated that "candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents" are disfavored (*ibid.*).

Ultimately each candidacy requirement "must be measured in terms of its consistency with the Act's command to unions to conduct 'free and democratic' union elections" (*ibid.*). Accordingly, the union's bur-

den of showing a legitimate union need for the restriction on candidacy should be commensurate with the qualification's impact on union democracy, and an essential element of the calculus of reasonableness is the union's ability to achieve the stated goals of a particular candidacy qualification by alternative means that may be less inimical to the purposes of the Act (*Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 244 F. Supp. 745, 749 (W.D. Pa.), affirmed in relevant part, 405 F. 2d 176 (C.A. 3)).

Under these standards, petitioners' meeting attendance requirement is unreasonable. The Secretary of Labor, to whose "special knowledge and discretion" the enforcement of Title IV has been entrusted (*Dunlop* v. *Bachowski,* 421 U.S. 560, 568; *Wirtz* v. *Local 153, supra,* 389 U.S. at 473; *Calhoon* v. *Harvey,* 379 U.S. 134, 140), has recognized that "[i]t may be reasonable for a [union] to establish a [meeting attendance requirement] * * * in order to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization," but he has cautioned that the reasonableness of such a qualification "must be gauged in the light of all the circumstances of the particular case, including * * * the number of meetings which must be attended, and the period of time over which the requirement extends * * * and the impact of the rule, i.e., the number or percentage of members who would be rendered ineligible by its application." 29 C.F.R. 452.38. As we now show, petitioners' 50 percent, three-year meeting attendance requirement so restricts the free choice

of union members to select their officers, and is otherwise so antithetical to union democracy, that the justifications for meeting attendance requirements in general cannot excuse its antagonism to "the Act's command to unions to conduct 'free and democratic' union elections" (*Hotel Employees, supra,* 391 U.S. at 499).

B. PETITIONERS' MEETING ATTENDANCE REQUIREMENT DEFEATS THE ACT'S GOAL OF ASSURING "FREE AND DEMOCRATIC" UNION ELECTIONS

The court of appeals determined that petitioners' meeting attendance qualification rendered 96.5 percent of the local union's membership ineligible for office (Pet. App. 3a).[7] A candidacy restriction that eliminates so large a percentage of the membership, and so restricts the freedom of choice of the voters,[8] stands

[7] Petitioners suggest (Br. 34, n. 31) that this determination was "based on an erroneous factual premise" because "the chances are" that some union members, in addition to the 23 who were eligible for having attended the required number of meetings, might have been eligible by virtue of a combination of meetings actually attended plus credits given for meetings missed on account of working hours or other union activities.

This argument comes too late. The facts necessary to sustain petitioners' hypothesis have always been readily available to the union, if such facts exist, and their absence from the record does not support petitioners' speculative challenge to the court of appeals' ruling.

[8] As the Court has recognized, more is at stake in Title IV cases than the right of individual members to seek union office. "The Act was not designed merely to protect the right of a union member to run for a particular union office in a particular election" (*Wirtz v. Local 125, Laborers' International Union*, 389 U.S. 477, 483). Rather, Congress was at least equally concerned with the right of

in such stark contrast to all plausible indicia of the democratic process that absent extraordinary circumstances it should be held invalid without further inquiry. In *Hotel Employees* this Court stated (391 U.S. at 502) that a candidacy limitation that disqualified 93 percent of the union membership "can hardly be a 'reasonable qualification'" under Section 401(e), and, as the court of appeals ruled (Pet. App. 7a), petitioners' rule "cannot be deemed a reasonable qualification either."

The percentage of union membership disqualified from office is not, however, the sole measure of the inimical impact on union democracy of a rule, like petitioners', that requires attendance at half of the 36 monthly meetings between triennial elections. As the court of appeals observed (Pet. App. 9a), the qualification requires would-be candidates to plan their campaigns at least 18 months before the election.[9] Thus a union member who regularly attended

the membership at large to choose union officers responsive to their wishes. See S. Rep. No. 187, 86th Cong., 1st Sess. 6–7 (1959) ("Union members have a vital interest * * * in the policies and conduct of union affairs. To the extent that union procedures are democratic they permit the individual to share in the formulation of union policy. * * * What is required is the opportunity to influence policy and leadership by free and periodic elections.").

[9] The Local's by-laws provide for attendance credits for members whose working hours or other union activities prevent attendance at the regular monthly meeting (A. 9). Apparently this "excuse" provision in practice qualifies very few members who have failed to attend the required 18 meetings; in this case only one member so benefited (Pet. App. 7a, n. 5).

union meetings for up to 17 months and otherwise demonstrated interest in and familiarity with the union's affairs could be disqualified from running for office and the membership denied the chance to vote for him.[10]

Such a long range planning requirement inevitably gives incumbents an advantage far beyond that tolerated in the American political system at large. It is unreasonable to assume that union leadership unobjectionable during the first year and a half of its incumbency necessarily will be equally unobjectionable during the next year and a half, or that every union member opposed to the leadership at election time would necessarily have had the foresight or the cause to launch an opposition campaign 18 months earlier. In most unions, there is no organized opposition party that retains its identity from election to election; typically an opposition group will form in response to a specific issue and will organize and exist only during a particular election.[11] And even if some dissidents do qualify themselves, the 50 percent, three-year meeting requirement is likely to impede their ability to muster a slate of eligible candidates large enough to contest the incumbents in a sufficient number of offices to make the challenge to the estab-

[10] Cf. *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, *supra*, 389 U.S. at 466, where the same effects resulted from a 75 percent, two-year meeting attendance requirement.

[11] Taft, *The Structure and Government of Labor Unions* 35–37, *supra*, 389 U.S. at 466, where the same effects resulted from a 75 (1959).

52 (1954); Leiserson, American Trade Union Democracy 74-75

lished leadership worthwhile.[12] Moreover, the effect of the rule in some cases may be to encourage disregard of the membership's wishes by union leadership already inclined in that direction, if it becomes clear nearly a year and a half before the next election that the ranks of eligible opponents will be meager or that the most articulate and persuasive opposition spokesmen have already been disqualified.

In *Hotel Employees* this Court stated that the anti-democratic impact of candidacy restrictions disqualifying a large percentage of the union membership is contrary to the purposes of the Act (391 U.S. at 499):

> Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.

Petitioners (Br. 35–36) and *amicus curiae* (Br. 13) seek to distinguish *Hotel Employees,* and to estab-

[12] Because an opposition group in a union is likely to find that many members do not support it, and that others who do support it would not wish to run for office as opposition candidates or are unsuitable candidates for reasons of age, health, or otherwise, the pool of theoretically eligible candidates is likely to yield only a small number who are actually available as opposition candidates even when restrictions on candidacy are lenient. This number may well shrink to a practical nullity when the pool of theoretically available candidates has already been diminished by a restrictive candidacy requirement, like petitioners', to less than four percent of the union membership.

lish the validity of the candidacy requirement in question here, by pointing out that the candidacy limitation in that case allowed the incumbents to control eligibility, whereas the meeting attendance requirement leaves eligibility solely to the foresight and inclination of the individual union member. However, this argument, which forms the basis for the decision in *Brennan* v. *Local 5724, United Steelworkers of America,* 489 F. 2d 884, 889 (C.A. 6), and the district court decisions cited by petitioners (Br. 5), distorts the statutory standard and misperceives the teaching of *Hotel Employees.*

Congress did not say that any candidacy requirement is permissible so long as a union member can satisfy it by dint of his own efforts. The standard stated in Section 401(e) is reasonableness, and "Congress plainly did not intend that [it] * * * should be given a broad reach" (*Hotel Employees, supra,* 391 U.S. at 499). Accordingly, most cases holding particular restrictions on candidacy unreasonable have involved qualifications with which it was possible for the individual member to comply. In addition to the decisions involving other meeting attendance rules,[13]

[13] *Brennan* v. *Local Union No. 639, International Brotherhood of Teamsters,* 494 F. 2d 1092 (C.A.D.C.) (holding unlawful a meeting attendance requirement that disqualified 97 percent of union membership); *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 244 F. Supp. 745 (W.D. Pa.), affirmed in relevant part, 405 F. 2d 176 (C.A. 3) (attendance rule disqualifying 97 percent held unreasonable); *Wirtz* v. *Local 262, Glass Bottle Blowers Association,* 290 F. Supp. 965, 967 (N.D. Cal.) (striking down an attendance requirement disqualifying 98.4 percent of the membership).

the courts have struck down preconditions to candidacy requiring timely advance payment of dues for a period of time;[14] filing a declaration of intent to be a candidate in advance of nominations,[15] and membership in a "parent local" requiring payment of an additional initiation fee.[16]

As these numerous decisions recognize, this Court in *Hotel Employees* did not attribute controlling significance to the fact that in that case would-be candidates could not by their own efforts insure their eligibility. Nor would it be consistent with the statutory purpose to hold it dispositive here that they can. To say (Pet. Br. 35) that because union members have it within their power to attend meetings petitioners' rule itself disqualifies no one, is to ignore the fact that the rule disqualified 96.5 percent of the membership in this case. The inevitable effect of a 50 percent, three-year rule is to restrict severely the

[14] *Wirtz* v. *Local 9, International Union of Operating Engineers,* 366 F. 2d 911 (C.A. 10); *Goldberg* v. *Amarillo General Drivers,* 214 F. Supp. 74 (N.D. Tex.); *Wirtz* v. *Local 410, International Union of Operating Engineers,* 53 L.C. ¶ 11,154, 61 LRRM 2396 (N.D. N.Y.), reversed on other grounds, 366 F. 2d 438 (C.A. 2); *Wirtz* v. *Local 545, International Union of Operating Engineers,* 64 LRRM 2449 (N.D. N.Y.), affirmed, 381 F. 2d 448 (C.A. 2).

[15] *Wirtz* v. *Local 30, International Union of Operating Engineers,* 242 F. Supp. 631 (S.D. N.Y.), reversed on other grounds, 366 F. 2d 438 (C.A. 2); *Wirtz* v. *Local 545, International Union of Operating Engineers,* 64 LRRM 2449 (N.D. N.Y.), affirmed, 381 F. 2d 448 (C.A. 2).

[16] *Hodgson* v. *Local 18, International Union of Operating Engineers,* 440 F. 2d 485 (C.A. 6), certiorari denied, 404 U.S. 852; *Wirtz* v. *Local 545, International Union of Operating Engineers,* 64 LRRM 2449 (N.D. N.Y.), affirmed, 381 F. 2d 448 (C.A. 2).

choices available to the membership by prohibiting potentially qualified candidates from running for office, and to favor incumbents by making would-be opposition candidates plan their campaign at least 18 months in advance of the election. Congress could not have intended to include a candidacy qualification having such antidemocratic effects among those that are "reasonable" under Section 401(e).

C. PETITIONERS' MEETING ATTENDANCE REQUIREMENT SO DISTORTS THE DEMOCRATIC PROCESS THAT THE JUSTIFICATIONS FOR MEETING ATTENDANCE REQUIREMENTS IN GENERAL CANNOT SAVE IT

We have argued above that a candidacy qualification that disqualifies 96.5 percent of the union membership is so antithetical to union democracy that it should be held illegal *per se*. At the very least, however, the proponents of such a rule should be required to demonstrate that it serves legitimate union needs of the highest order, and that these needs cannot be met by methods that trench less severely upon the goals of the Act. We submit that petitioners have failed to make such a showing and that their meeting attendance requirement is irreconcilably hostile to "free and democratic" union elections.

1. Petitioners first suggest (Br. 19–21) that a three-year, 50 percent rule is warranted because it encourages attendance at union meetings. Yet petitioners have not shown (and indeed do not even argue) that such a rule is the only way, or even the best way, to foster attendance by the membership; nor have they offered any other reason why, from among various

possible inducements to attendance, they have chosen one that happens also to disqualify nonattending members from holding union office.[17]

Apparently in recognition that the rule acts as an attendance incentive only for would-be candidates, petitioners make the seemingly narrower contention that it is justified because (Br. 21) it "insures that those who are in opposition to the leadership will come to union meetings in order to keep ripe their right to run for local union office." The presence of the opposition at union meetings is said to deter chi-

[17] It may be, as petitioners assert (Br. 19), that "there is general apathy among workingmen about attending union meetings"; indeed, evidence of record indicates that "practically nothing" (A. 41–42), including providing refreshments at the meeting place or fining nonattending members, has proved effective in permanently increasing attendance at routine union meetings. This does not, however, ease petitioners' burden of demonstrating why their rule is necessary, or even preferable to the many other alternative incentives that might be equally as effective (or ineffective) without disqualifying nearly all of the membership from eligibility for office.

None of the documents stipulated (A. 17–21) to trace the genesis of the present three-year, 50 percent rule, from its origin as a six month, 50 percent rule in the first constitution of the United Steelworkers of America (adopted in 1942) through its various modifications at the biannual conventions of the International (at each of which a constitution is adopted), indicates that the rule was ever intended to be a general incentive to meeting attendance by the membership at large. Indeed, the only reason ever advanced for extending the rule from six months to progressively longer periods was that the term of union office had been extended (from one, then to two, and finally to three years). In short, the rule seems to have been mechanically extended wholly without regard to its impact on meeting attendance.

canery or corruption on the part of the leadership, and thus, according to petitioners (*ibid.*), "the rule actually furthers the objectives of the Act."

This argument proceeds on several faulty premises. First, it assumes that the dissatisfaction with the incumbency felt by would-be opposition candidates at election time will have crystallized and been acted upon at least 18 months earlier. For the reasons already stated, however (*supra*, pp. 17–19), it is at least equally likely that most would-be candidates will not have anticipated their opposition status that far in advance. Indeed, petitioners' rule may actually discourage attendance by opponents of the incumbent leadership who find themselves within the 18-month period with no means of qualifying themselves in time to have any impact on the election.

Second, petitioners' argument assumes that there are no means less destructive of the democracy of the electoral process that can police the union leadership so effectively as a three-year, 50 percent attendance requirement as a condition of candidacy. It is not suggested that without so strict a requirement attendance at union meetings by the rank-and-file would fall off completely, and petitioners do not explain how dishonest or corrupt practices by the leadership are more likely to be exposed and corrected by whatever incremental attendance the rule may in fact foster. Indeed, although attendance by the membership may be an effective restraint upon at least some kinds of arbitrary or dishonest union leadership, wholly alternative methods, such as the use of an independent reporter to record and transcribe the business conducted at the meeting, might also expose any lack of diligence or sharp practices engaged in by the incumbency.

Finally, even if the rule does encourage some members to attend some union meetings, the average attendance at Local 3489's regular meetings during the relevant period was only 47 members out of 660, and such a record cannot justify disqualifying 96.5 percent of the members from election to office. The result is no better in the other cases in which the Secretary has challenged the reasonableness of the same rule. In Steelworkers Local 1150, with 3,000 members, meeting attendance averaged 68;[18] in Local 1299, with 9,000 members, attendance averaged 125;[19] in Local 3911, with 1,900 members, attendance averaged 76;[20] in Local 5724, with 1,700 members, attendance averaged 45;[21] and in Local 6799, with 578 members, day shift

[18] See *Shultz* v. *Local 1150, United Steelworkers of America*, 64 L.C. ¶11,288, 75 LRRM 2869 (S.D. Ind.) (upholding the rule as reasonable), vacated on other grounds, C.A. 7, No. 71–1467, July, 1971 (unreported).

[19] See *Shultz* v. *Local 1299, United Steel Workers of America*, 324 F. Supp. 750 (E.D. Mich.) (upholding the rule), affirmed in part *sub nom. Hodgson* v. *Local 1299, United Steelworkers of America*, 453 F. 2d 565 (C.A. 6).

[20] See *Brennan* v. *Local 3911, United Steelworkers of America*, 372 F. Supp. 961 (N.D. Ill.); 71 L.C. ¶13,730, 83 LRRM 2519 (N.D. Ill.) (holding the rule unreasonable).

[21] See *Brennan* v. *Local 5724, United Steelworkers of America*, 489 F. 2d 884 (C.A. 6) (upholding the rule).

attendance averaged 46, and swing shift attendance averaged 25 or fewer.[22]

2. Petitioners also seek to justify their three-year, 50 percent attendance requirement by arguing that it insures that would-be office holders have demonstrated an interest in union affairs prior to the election. Yet the requirement disqualifies a union member who may have displayed his interest in union affairs by attending union meetings for as long as 17 months, and it assumes that attendance at union meetings is virtually the only means by which a member can demonstrate that interest. Although under the Local's by-laws credit is given for meetings missed on account of work hours or other, conflicting union activities, no credit is given for union activities engaged in at times that do not conflict with the union meeting. And the rule irrebuttably presumes a lack of interest on the part of would-be candidates whose failure to attend the requisite number of meetings is caused by jury duty, military service, or some unforeseen emergency such as an illness or accident.

Moreover, whether a candidate is likely to retain his interest in union affairs if elected, and the relation-

[22] See *Shultz* v. *Local Union 6799, United Steelworkers of America*, 60 L.C. ¶10,261, 71 LRRM 2820 (C.D. Cal.) (holding the rule reasonable), affirmed on other grounds, 426 F. 2d 969 (C.A. 9), affirmed on other grounds *sub nom. Hodgson* v. *Local 6799, United Steelworkers of America*, 403 U.S. 333.

In each of the foregoing cases (see nn. 18–22, *supra*) additional members were eligible for candidacy because of excused absences due to meetings being held while work shifts were in progress. The resulting higher eligibility percentage was plainly not caused, however, by the rule's encouragement of attendance.

ship of his past performance to that question, is first and foremost a campaign issue. Petitioners' insistence that a record of attendance at 18 of 36 meetings over a three-year period is necessary to protect the union against election of officers of unproven dedication unwarrantedly assumes that the union membership is incapable of achieving the same goal by educated use of the ballot. See *Hotel Employees, supra*, 391 U.S. at 504.

3. The need to assure capable union leadership is the third union need asserted by petitioners to justify their meeting attendance requirement (Br. 23–27). The thesis is that attendance at the regularly scheduled union meetings is so essential to an adequate understanding of the complicated duties and responsibilities of a union leader that only members who have attended the required number of meetings should be permitted to run for office.

Like the preceding argument that the rule is necessary to guarantee committed leaders, this contention is foreclosed by *Hotel Employees* (391 U.S. at 504):

> It assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates * * *. But Congress' model of democratic elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots.

Petitioners have "made no showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members" (*ibid.*), and accordingly a concern for capable leadership cannot justify a rule that disqualifies so large a percentage of the union membership from running at all.

Moreover, petitioners have not shown a clear and direct relationship between the meeting attendance requirement and the union's need for qualified and knowledgeable leadership. The record contains uncontradicted expert testimony that "the meeting attendance rule is not necessary to give [a] member a knowledge of what transpires in the Union and what the Union's problems are," and that such knowledge is typically acquired by union members at the work place itself (A. 39–41).[23] Furthermore, like the prior office-holding restriction invalidated in *Hotel Employees,* petitioners' rule "is not faithful to its own premise" (391 U.S. at 504), since it allows members to run for office even if they have attended fewer than the required number of meetings, or no meetings at all, so long as the failure to attend was due to conflicting working hours or other union activities (A. 9).[24]

[23] In dispute of this conclusion, petitioners have attached to their brief an appendix setting forth testimony given in another case by counsel for the International and by two International employees. This testimony tends to show, *inter alia*, that the Steelworkers have a highly centralized International Union, which negotiates collective bargaining agreements for its locals (Br. App. 17, 18, 25, 27, 30); that the International maintains special departments to provide information and assistance to local unions in such areas as bargaining and contract administration, pensions, insurance, and civil rights (Br. App. 27–28); that International staff representatives are ever present to furnish guidance in the conduct of local union affairs (Br. App. 19–22, 27, 28, 30); and that the International sponsors various training programs and seminars to acquaint officers and members with current problems facing the union (Br. App. 21). Indeed, as part of this testimony, the International's General Counsel admitted that it would be possible for a member who had never attended a meeting to function as a union officer (Br. App. 55).

Finally, although some of the reasons urged by petitioners in justification of their requirement may support the legitimacy of *a* meeting attendance rule, none even addresses, let alone sustains, the need for a candidacy rule requiring attendance at half of the regular meetings over a 36-month period.[25] When the International constitution was first drawn up in 1942, it conditioned candidacy on attendance at one-half of

[24] *Amicus* suggests an analogy between the Steelworkers' attendance requirement and citizenship or residency requirements common in political elections, arguing that the goals of the former are "quite similar" (Br. 7) to those of the latter, which have been held to justify the restrictions on candidacy that those requirements embody. But the Steelworkers have their own "citizenship" (two years' membership) and "residence" (employment in the plant) requirements (A. 10) to assure minimal familiarity with the union's affairs, making an additional 50 percent, three-year meeting attendance requirement superfluous in this regard as well as grossly more restrictive of the pool of eligible candidates than are citizenship and residency requirements.

[25] The Secretary formerly sanctioned a two-year meeting attendance rule, but, as the court below noted (Pet. App. 10a), petitioners' three-year rule "can be 50% harsher as to the number of meetings which a member must attend to qualify for office and

the meetings for six months prior to the election (A. 19). As the term of office for the constituent local unions has increased from one to three years, the attendance rule has also been extended, and it is now the most restrictive of its type mandated by any international constitution. The Secretary introduced into evidence a chart showing that, among 72 international unions, comprising 90 percent of the nation's union membership, only 12 had any mandatory meeting attendance requirement at all, and only one other than the Steelworkers had a requirement extending beyond a two-year period (A. 31–33, 45–48).[26] Thus, again like the requirement in *Hotel Employees*, petitioners' rule "is virtually unique in trade union practice" (391 U.S. at 505), and it therefore can hardly be said to be necessary to good union governance.

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as to the time limitations imposed on his decision to seek office." Further experience in administering the Act has convinced the Secretary, in light of court decisions, "that it is not feasible to establish arbitrary guidelines for judging the reasonableness of such a qualification. Its reasonableness must be gauged in the light of all the circumstances of the particular case * * *." 29 C.F.R. 452.38.

[26] The Railroad Trainmen Union has an attendance requirement spanning 36 months, requiring would-be candidates to have attended seven meetings during that period (two of them in each of the two years preceding the year of the election, and three of them in the year of the election) (A. 47, 48). Four unions have meeting attendance requirements extending for a six-month period; two, for a 12-month period; and three for a 24-month period (A. 46–47). The Boilermakers Union requires that prospective candidates must attend a number of meetings fixed by the local (A. 33, 46, 48).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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